THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

RAYMOND L. BLOINK, BRADLEY W. KIBBEL and BOB R. POWELL,

Junior Party,

v.

RAYMOND L. BLOINK, BRADLEY W. KIBBEL and BOB R. POWELL,

Junior Party,

v.

KOJI SHIMA, EIJI HATTORI and YASUO OGURI,

Senior Party.

Patent Interference No. 103,809

**MEMORANDUM OPINION AND ORDER
ENTERING JUDGMENT-IN-PART AND
TERMINATING FOR LACK OF JURISDICTION-IN-PART**

I.

Discussion

A.

Bloink has advised the Board of Patent Appeals and Interferences that the assignee of U.S. Patent Nº 5,279,753, issued January 18, 1994, has filed a STATUTORY DISCLAIMER in which it "disclaims claims 1-13" of the patent. See TRANSMITTAL OF STATUTORY DISCLAIMER (Paper No. 12). Claims 1-13 are all the claims in the patent and correspond to Count 2, the only count remaining in the interference.

Filing a statutory disclaimer under 35 U.S.C. § 253 of all claims of a patent involved in an interference shall be taken as a request for an entry of an adverse judgment. 37 CFR § 1.662(c). See also Guinn v. Kopf, 96 F.3d 1419, 40 USPQ2d 1157 (Fed. Cir. 1996). Accordingly, a judgment shall be entered against Bloink with respect to count 2 and claims 1-13 of U.S. Patent Nº 5,279,753.

B.

Bloink suggests that the Board of Patent Appeals and Interferences lacked subject matter jurisdiction under 35 U.S.C. § 135(c) at the time the interference was declared over Bloink U.S. Patent Nº 5,149,454, granted September 22, 1992. Bloink bottoms his suggestion on the fact that a necessary maintenance fee had not been paid in connection with the patent. See MOTION TO TERMINATE INTERFERENCE FOR LACK OF JURISDICTION (Paper No. 13). We are advised that it is the assignee's intent "not to revive the above patent." Id. at 2.

Bloink is factually correct that at the time the interference was declared, a required maintenance fee had not been paid in connection with U.S. Patent Nº 5,149,454. Hence, the patent had expired. The board does not have jurisdiction to declare an interference between a pending application and an expired patent. 35 U.S.C. § 135(c); Petrie v. Welsh, 21 USPQ2d 2012 (Bd. Pat. App. & Int. 1991). Accordingly, this interference should be terminated without entry of a judgment with respect to U.S. Patent Nº 5,149,454.

II.

Order

Upon consideration of the record, and for the reasons given, it is

ORDERED that with respect to U.S. Patent Nº 5,279,753, issued January 18, 1994 and Count 2 (see Paper No. 7, page 21), the sole count in the interference, judgment is entered against Junior Party Raymond L. Bloink, Bradley W. Kibbel and Bob R. Powell.

FURTHER ORDERED that Junior Party Raymond L. Bloink, Bradley W. Kibbel and Bob R. Powell is not entitled to a patent containing claims 1-13 (corresponding to Count 2) of U.S. Patent Nº 5,279,753, issued January 18, 1994.

FURTHER ORDERED that, on this record, and with respect to the interference between Bloink U.S. Patent Nº 5,279,753 and Shima application 08/461,753, filed June 5, 1995, Senior Party

Koji Shima, Eiji Hattori and Yasuo Oguri is entitled to a patent containing claims 21-24 (corresponding to Count 2) of application 08/461,753, filed June 5, 1995.

FURTHER ORDERED that the interference between Bloink U.S. Patent Nº 5,149,454 and Shima application 08/461,753, filed June 5, 1995, is terminated without entry of a judgment on the merits for lack of subject matter jurisdiction.

ANDREW H. METZ Administrative Patent Judge	)	
FRED E. McKELVEY, Senior Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ADRIENE L. HANLON Administrative Patent Judge	)	

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